

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
MARTINSBURG**

**JANE D. ISHMAN and
MICHAEL L. ISHMAN,**

Plaintiffs,

v.

**CIVIL ACTION NO. 3:04-CV-21
(BAILEY)**

**PENN LYON HOMES, INC.,
dba Penn Lyon Homes Corporation,
a Pennsylvania business corporation,
and FOWLER HOMES, LLC, a Virginia
limited liability company, et al.,**

Defendants.

ORDER GRANTING STAY PENDING APPEAL

Pending before this Court is a Motion to Stay Pending Appeal (Doc. 298), filed by defendant Penn Lyon Homes, Inc. (hereinafter "Penn Lyon"). In the motion, Penn Lyon seeks a stay of the judgment entered in this case (Doc. 294) pending the resolution of Penn Lyon's appeal and requests that this Court permit Penn Lyon to use an irrevocable letter of credit, rather than posting a supersedeas bond.

The plaintiffs filed a response to the motion (Doc. 303), in which they request this Court to deny the stay or, if the stay is granted, to require a supersedeas bond rather than a irrevocable letter of credit.

This Court, having reviewed the motion and response, is of the opinion that the stay of judgment should be granted. Under Rule 62(d) of the Federal Rules of Civil Procedure, the stay issues as a matter of right upon the approval of the bond by the court. 11 Wright, Miller & Kane, ***Federal Practice and Procedure*** Civil 2d § 2905 (1995); ***Southeast***

Booksellers Ass'n v. McMaster, 233 F.R.D. 456 (D. S.C. 2006).

The issue then becomes the security for the stay. The plaintiffs have argued that the supersedeas bond is mandatory. According to Wright, Miller and Kane, *supra*, courts have the inherent power to permit security other than the bond to secure a stay. See ***In re Bonds Distributing Company, Inc.***, 319 B.R. 440, 442 (M.D. N.C. 2004).

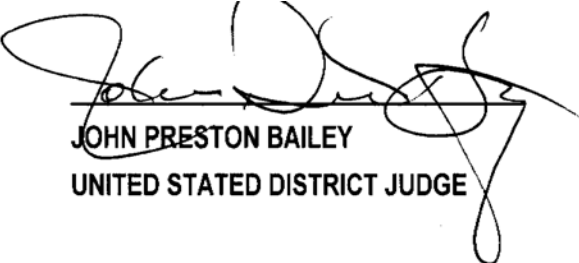
This Court is unable to perceive in what manner the plaintiffs would be prejudiced by the approval of an irrevocable letter of credit rather than a supersedeas bond. Accordingly, defendant Penn Lyon shall submit to this Court for approval an irrevocable letter of credit payable to Jane Ishman and Michael L. Ishman in the amount of Two Hundred Thousand Dollars (\$200,000.00). The letter of credit shall provide that if the judgment issued by this Court on July 19, 2007, is affirmed or modified, the bank shall pay the plaintiffs the amount of the final judgment together with interest and all costs that may be awarded. If the judgment is reversed then the obligation shall be void.

Accordingly, the defendant's Motion to Stay Pending Appeal (Doc. 298) is hereby **GRANTED** on the terms and conditions herein stated.

It is so **ORDERED**.

The Clerk is hereby directed to transmit copies of this Order to counsel of record herein.

DATED: August 10, 2007.


JOHN PRESTON BAILEY
UNITED STATES DISTRICT JUDGE